

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

UNITED STATES OF AMERICA, CASE NO. 1:16-cr-260

Plaintiff,

vs.

FRIDAY, MAY 4, 2018

RUSSELL DAVIS,

Defendant.

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TRANSCRIPT OF TRIAL BY JURY
HELD BEFORE THE HONORABLE CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Jury Question No. 4

10:11:29 1 (In Chambers.)

10:11:29 2 JURY QUESTION NUMBER 4

10:11:38 3 THE COURT: We're in chambers with counsel.

10:11:41 4 Mr. Katsaros is in Youngstown, but he is with us via

10:11:45 5 smartphone in Mr. Corts' hands.

10:11:49 6 So we have received a fourth question from the jury,

10:11:53 7 which reads as follows:

10:11:54 8 "Can we have the academic papers presented by the

10:11:59 9 prosecution and defense?"

10:12:01 10 Signed by the foreperson, dated 5/4/18.

10:12:05 11 We've had discussions about this question. There is

10:12:08 12 disagreement between the parties, and therefore the Court

10:12:11 13 has decided on this response, which will read as follows:

10:12:17 14 "Ladies and gentlemen, I have received your fourth

10:12:18 15 question and have shared it with counsel. The Court

10:12:20 16 responds as follows:

10:12:21 17 "The academic papers were not admitted into evidence,

10:12:26 18 and therefore they are not exhibits which you may have.

10:12:29 19 However, you may consider the testimony from the experts

10:12:31 20 relating to the academic papers.

10:12:34 21 "Please continue with your deliberations."

10:12:37 22 Mr. Corts, on behalf of the Government?

10:12:38 23 MR. CORTS: Your Honor, our position -- we

10:12:43 24 have no problem with your response. Our position is,

10:12:49 25 though, that it was a simple question, "Can we have the

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10:12:53 1 academic papers presented by the prosecution and defense."

10:12:56 2 Our proposed answer would be, "No. They're not admitted as
10:13:01 3 exhibits."

10:13:01 4 THE COURT: Okay. Mr. Thompson?

10:13:05 5 MR. THOMPSON: Thank you. The defense would
10:13:07 6 request additional language in that response indicating that
10:13:10 7 they may consider not only the testimony of the experts
10:13:13 8 regarding those articles but also the portions of the
10:13:15 9 articles that were read into the record.

10:13:18 10 THE COURT: Okay. Objections are noted on
10:13:20 11 both sides. That's the Court's response. This will go back
10:13:24 12 to the jury.

10:13:25 13 MR. CORTS: Thank you, Judge.

10:13:39 14 THE COURT: All right. You want to waive the
10:13:40 15 presence of your client when you make your oral motion for a
10:13:43 16 mistrial?

10:13:55 17 MR. BRYAN: Yes.

10:13:55 18 (Off-the-record discussion.)

10:14:03 19 MOTION HEARING

10:14:08 20 MR. BRYAN: Judge, I've actually gone back and
10:14:11 21 forth on this quite a bit. I think in an abundance of
10:14:17 22 caution though -- in fact, when we were told that the jury
10:14:19 23 had another question before coming up here, obviously I
10:14:23 24 didn't know what the question was. I thought maybe it could
10:14:28 25 have been based upon their condition yesterday that we're

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10:14:30 1 not going to be able to reach a decision as it relates to
10:14:34 2 the specification. And in that case I was going to not make
10:14:38 3 a motion at that time. I was just going to -- because I
10:14:41 4 think we preserved the record yesterday as it related to
10:14:44 5 that issue, that we're sort of beyond that point if they
10:14:48 6 were hung on the death specification.

10:14:51 7 But since that appears to still be in play, I think
10:14:55 8 out of an abundance of caution I need to make a better
10:14:58 9 record than I made yesterday.

10:14:59 10 THE COURT: Go ahead.

10:15:00 11 MR. BRYAN: So that's what I'm attempting to
10:15:02 12 do right now.

10:15:02 13 Prior to the jury being instructed in this case, we
10:15:07 14 requested the Court to not put in the standard "on or about"
10:15:12 15 instruction that's typical in just about every case. And we
10:15:17 16 raised the specificity of the charges and the allegations in
10:15:20 17 this case. And the Court agreed that the "on or about"
10:15:25 18 instruction shouldn't go back based upon not only the
10:15:28 19 specificity in the pleadings but how the case was presented
10:15:31 20 very specifically to a specific date and time as it related
10:15:35 21 to a transaction that the Government alleged resulted in the
10:15:38 22 death of Jacob Castro-White.

10:15:42 23 The jury yesterday afternoon requested some guidance
10:15:46 24 as it related to "on or about," you know, how do they
10:15:50 25 interpret "on or about" as it relates to Count 1 in the

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10:15:53 1 indictment because that language was still in the
10:15:56 2 indictment.

10:15:57 3 At that time, the Court initially felt -- well,
10:16:03 4 obviously the judge is here and can correct me if I'm wrong.
10:16:07 5 But as we were sort of thinking out loud, there was some
10:16:11 6 discussion that the jury should just be instructed that all
10:16:15 7 the evidence was presented towards March 7th at 12:34 a.m.
10:16:20 8 That's the time period that you should consider when you're
10:16:22 9 considering "on or about."

10:16:25 10 Mr. Katsaros made a very strong plea against that, and
10:16:30 11 then the Court changed a little bit and wrote what I will
10:16:36 12 acknowledge is a very craftily drafted response to the
10:16:44 13 jurors' question, specifically -- it's already part of the
10:16:48 14 record, but it's part of my motion. I'll read it into the
10:16:50 15 record. That "'on or about' must be viewed and framed in
10:16:53 16 light of all the evidence the jury must reasonably consider
10:16:55 17 in reaching a verdict on Count 1 and, if applicable, the
10:16:58 18 death enhancement. Please continue with your
10:17:01 19 deliberations."

10:17:02 20 The jury then did continue with their deliberations,
10:17:06 21 and later in the day they announced that they were -- in
10:17:10 22 essence reached an impasse on a count under consideration
10:17:14 23 without knowing exactly which count or -- that they had
10:17:20 24 reached an impasse. The jury -- the Court requested the
10:17:24 25 jury if they had reached a verdict on Count 1, the

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10:17:28 1 underlying trafficking charge, which the jury returned and
10:17:31 2 said that they had reached a verdict on Count 1, but they
10:17:35 3 were at an impasse as it related to the specification.

10:17:38 4 I went home and basically couldn't sleep about this
10:17:45 5 issue because I felt that although it certainly wasn't as
10:17:50 6 bad as just giving the traditional "on or about"
10:17:54 7 instruction, the language I think that was given to the
10:17:58 8 jury, the fact that it wasn't narrowed to that specific date
10:18:01 9 and time, left open the possibility that the jury -- members
10:18:06 10 of the jury could cobble together a finding of guilt based
10:18:10 11 upon multiple theories, one of which would be if the jurors
10:18:13 12 determined the Government proved beyond a reasonable doubt
10:18:15 13 that Mr. Davis distributed drugs on March 7 at 12:34, but
10:18:22 14 also if the jury determined beyond a reasonable doubt that
10:18:24 15 Mr. Davis distributed drugs at other times, that could be
10:18:27 16 construed as on or about March 7.

10:18:30 17 So I went back and I looked at the evidence in the
10:18:32 18 case, and the most recent alleged transaction that was
10:18:37 19 presented in the evidence was the transaction that began on
10:18:41 20 the morning of March 6, 2016, and that in essence
10:18:47 21 consummated with a text message from Corey Stock to Jacob
10:18:53 22 Castro-White at 1:10 in the afternoon on March 6.

10:18:57 23 And in that text message, Corey Stock said to
10:19:02 24 Castro-White, "Here." And it was clear from the earlier
10:19:05 25 text messages that he was going purportedly to grab drugs

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10:19:09 1 from Mr. Davis to bring back to him. And so it appears to
10:19:16 2 me that the most recent in time to the March 27, '16, 12:34
10:19:24 3 transaction was that March 6 at 1:10 in the afternoon.

10:19:31 4 We know from the record in the case that
10:19:34 5 Mr. Castro-White, we don't know what he did that specific
10:19:36 6 afternoon, but we do know that later that evening he met
10:19:40 7 with his girlfriend and they went out to dinner and they
10:19:42 8 went to a movie, and they also went to a -- they came back
10:19:46 9 to his home and they were watching television, fell asleep
10:19:49 10 in the basement.

10:19:50 11 Also, according to the testimony, at around 10:00 Miss
10:19:54 12 Litz went home, and Mr. Castro-White went to his friend
10:19:59 13 Donny Buchs' house.

10:20:01 14 While he was at Donny Buchs' house, he came into
10:20:03 15 contact with Harry Karaplis around 11:30, 11:20, 11:30,
10:20:09 16 where then it was discussed they would attempt to go acquire
10:20:13 17 drugs from Mr. Davis. And so then the scene of events that
10:20:17 18 occurred were texting back and forth, calling back and
10:20:19 19 forth, attempts to contact Mr. Davis throughout the rest of
10:20:24 20 the hours on March 6, spilling over into the early morning
10:20:27 21 hours of March 7.

10:20:28 22 The evidence is clear that Castro-White picked up
10:20:35 23 Karaplis around 12:16 a.m. It's also clear that cell tower
10:20:42 24 information put them in the vicinity of Davis's residence
10:20:46 25 and also the vicinity of another known source of supply,

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10:20:49 1 Erika Matus, at around 12:34, when the last telephone call
10:20:54 2 was made to Mr. Davis. And then nothing, at least no
10:20:58 3 telephone records existed of anything happening after that.

10:21:02 4 The Government's only evidence presented at trial was
10:21:04 5 that Harry -- through the testimony of Harry Karaplis was
10:21:10 6 that Mr. Karaplis took the drugs to Castro-White's house
10:21:14 7 first and they used -- or Castro-White used and then they
10:21:19 8 went to Harry Karaplis's mother's house. Karaplis used and
10:21:21 9 then Karaplis said he fell out and then woke up a couple
10:21:24 10 hours later to know that Castro-White had left.

10:21:26 11 I've never -- or we argued our Rule 29 motion. I'm
10:21:33 12 not arguing at this point that that was insufficient
10:21:34 13 evidence or anything like that. But the point is is that
10:21:37 14 Castro-White was then found dead at 6:50 a.m. So I think
10:21:45 15 when this case was so not only specifically charged but
10:21:48 16 specifically pled, when we didn't keep the jury on that
10:21:52 17 transaction of events, the jury was free to speculate beyond
10:21:59 18 sort of the parameters of the case in determining whether or
10:22:04 19 not Mr. Davis committed drug trafficking on or about.

10:22:10 20 When the jury came back and said that they were
10:22:13 21 deadlocked, that they'd reached a verdict on Count 1 but
10:22:16 22 were deadlocked on Count 2, my fear is that they could have
10:22:19 23 cobbled together a finding of guilt on Count 1 from
10:22:25 24 drug-related activity that took place on March 6 and then
10:22:28 25 drug-related activity that took place on March 7.

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10:22:31 1 My concern about if they cobble together drug-related
10:22:34 2 activity that took place on March 6 is twofold. The first
10:22:40 3 thing is is I'm not sure that that would have withstood a
10:22:44 4 challenge -- if that was charged as a separate count, if
10:22:48 5 that could have withstood a challenge for sufficiency of
10:22:50 6 evidence, most notably because we don't know the chemical
10:22:55 7 composition of the drugs that were distributed that day
10:22:58 8 because we don't have a sample of the drugs that were
10:23:00 9 distributed that day, and this case is very specifically
10:23:05 10 charged as a distribution of Fentanyl case. There's no
10:23:11 11 allegation of distribution of heroin/Fentanyl or heroin
10:23:14 12 and/or Fentanyl. It's specifically charged as a
10:23:17 13 distribution of Fentanyl case.

10:23:19 14 MR. CORTS: Mixture of substance.

10:23:21 15 MR. BRYAN: Or mixture of substance containing
10:23:24 16 a detectable amount of Fentanyl. But we don't know if there
10:23:28 17 was Fentanyl in drugs that were never tested. I'm not sure.
10:23:30 18 Government could argue, well, there was Fentanyl in
10:23:34 19 Castro-White's urine, which means that he was using Fentanyl
10:23:36 20 before. All I would point to is that there were other
10:23:40 21 sources of supply, although of course the Government's focus
10:23:44 22 was entirely on Mr. Davis.

10:23:45 23 So that's my concern for just the jury being able to
10:23:51 24 consider that other acts evidence as the substantive
10:23:56 25 evidence of Mr. Davis's trafficking activity.

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10:24:00 1 But I think the concern is larger as it relates to the
10:24:03 2 specification, the death specification. And that concern is
10:24:07 3 is that there's literally zero evidence in the record that
10:24:11 4 anything that Castro-White obtained at 1:10 p.m. on March 6
10:24:18 5 was ingested by him which resulted in his death. And the
10:24:23 6 Government may argue that he could have stored or hoarded
10:24:26 7 the drugs only to be used later. I would submit for the
10:24:33 8 Court that doing so is rank speculation and that that type
10:24:38 9 of speculation should not be able to be relied upon when
10:24:43 10 we're talking about the specificity required by United
10:24:49 11 States/Burridge that the drug has to be the but-for cause of
10:24:53 12 the individual's death.

10:24:54 13 The only drug in this instance, if the jury believes
10:24:58 14 the testimony of Harry Karaplis or believes that -- beyond a
10:25:03 15 reasonable doubt that Karaplis grabbed drugs from Mr. Davis
10:25:06 16 that night, that could even meet the Burridge test of being
10:25:12 17 the but-for cause of the -- the cause of death of Jacob
10:25:18 18 Castro-White were drugs that were seized -- or allegedly
10:25:21 19 obtained on March 7 at 12:34 a.m.

10:25:28 20 To think that Jacob Castro-White, a known heroin
10:25:32 21 addict, would hold onto a small amount -- I believe that
10:25:35 22 transaction was a 30 or \$40 transaction -- a small amount of
10:25:41 23 heroin to use later goes against the evidence in this case.
10:25:45 24 In addition to the fact that at 7:30 that evening he had a
10:25:48 25 telephone conversation with Corey Stock wherein he was

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10:25:55 1 disappointed that Corey Stock had made another drug run to
10:25:59 2 Russell Davis's house without him. So if he still had drugs
10:26:01 3 from earlier in the day from Russell Davis, I would not
10:26:05 4 think that that would have come off as such a disappointment
10:26:08 5 to him.

10:26:10 6 Also, in addition to the fact that he actually was
10:26:13 7 seeking drugs from Mr. Davis in the early morning hours of
10:26:15 8 March 7th indicates that he did not have any other drugs,
10:26:19 9 that those drugs had already been consumed.

10:26:23 10 I think it's also relevant in this inquiry to bring up
10:26:25 11 the clear evidence from the day before on March 5 when Corey
10:26:30 12 Stock -- or, excuse me, when Jacob Castro-White received
10:26:33 13 drugs from Corey Stock and immediately texted that he had to
10:26:39 14 go back home, change into his work clothes, grab his food,
10:26:42 15 and shoot his stuff. And clearly "shoot his stuff" meant
10:26:46 16 that he was going back home to use the heroin that he had
10:26:49 17 just received from Jacob Castro-White.

10:26:52 18 Again, if this case was standing alone a drug -- just
10:26:56 19 a general drug trafficking case without a specification, the
10:27:02 20 "on or about" instruction probably would not have even been
10:27:05 21 objected to. The fact that this case is tied in with the
10:27:10 22 death specification I think makes this case one of those
10:27:13 23 uniquely timed cases that would fall under the Sixth
10:27:20 24 Circuit's I guess it's more dicta than anything else, in
10:27:24 25 United States vs. Neuroth.

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10:27:28 1 But previously to that, United States vs. Henderson,
10:27:30 2 the Sixth Circuit reversed the defendant's conviction where
10:27:34 3 the "on or about" instruction was given and there was no
10:27:35 4 variation in the date of offense alleged in the indictment,
10:27:40 5 the proof presented at trial, and the defendant's alibi for
10:27:43 6 that day.

10:27:45 7 So that is still good law in the circuit. That case
10:27:50 8 was commented upon in United States vs. Neuroth in an
10:27:56 9 en banc decision where they didn't reverse the defendant's
10:28:00 10 conviction but gave some guidance and dicta where they said
10:28:03 11 in determining whether an "on or about" instruction is
10:28:06 12 proper in a particular case, the District Court should look
10:28:08 13 at how specifically the Government alleges in its indictment
10:28:12 14 the date on which the offense occurred and compare that
10:28:15 15 proof at trial as to what date the offense occurred. If the
10:28:20 16 indictment or proof points exclusively to a particular date,
10:28:25 17 it was be preferably for the trial judge to avoid the "on or
10:28:28 18 about" language.

10:28:29 19 And I believe that's what the Court did before it
10:28:32 20 instructed the jury generally. But I think a bit of that
10:28:34 21 was undone by failing to instruct the jury that they can
10:28:38 22 only consider "on or about" as it relates to March 7, 12:34
10:28:45 23 a.m., because this was specifically charged in a
10:28:47 24 specifically -- presented in a specifically argued case.

10:28:51 25 In essence, what happened yesterday after Mr. Katsaros

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10:29:01 1 articulated his position was that we widened the scope of
10:29:04 2 the case beyond the case that was even tried or defended
10:29:07 3 against and allowed the jury to reach a potentially
10:29:13 4 nonunanimous decision as it relates to the theory of
10:29:19 5 trafficking. And I believe that fear still -- or that fear
10:29:24 6 or that possibility obviously is still at play when it comes
10:29:30 7 to the death specification.

10:29:33 8 So the jury, if they believe that they can consider
10:29:36 9 offense conduct outside of March 7th, 2016, in determining
10:29:41 10 whether or not Castro-White passed away from drugs that were
10:29:45 11 purchased on an earlier date, I think that would violate
10:29:50 12 United States vs. Jackson as it relates to sufficiency of
10:29:53 13 evidence, that there is insufficient evidence to suggest
10:29:59 14 that drugs purchased prior to March 7, 12:34 a.m., could
10:30:06 15 have been the but-for cause of Castro-White's death.

10:30:12 16 So we're asking for a mistrial on everything. I think
10:30:17 17 perhaps in the alternative, if the jury could be instructed,
10:30:20 18 as it relates to the death specification, that their inquiry
10:30:27 19 must be restricted to March 7 and not to any other date.

10:30:33 20 THE COURT: Okay, Mr. Bryan. Thank you.

10:30:35 21 Mr. Corts, on behalf of the Government?

10:30:37 22 MR. CORTS: Yes, Judge. I'm not going to go
10:30:39 23 through the evidence. I'll just respond.

10:30:42 24 As I understand, Mr. Bryan's motion is a mistrial
10:30:45 25 based upon jury instructions.

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10:30:50 1 MR. BRYAN: Well, the answer to a jury
10:30:52 2 question.

10:30:52 3 MR. CORTS: Right, okay, the answer to a jury
10:30:54 4 question related to instructions to the jury.

10:30:58 5 So, first of all, for sufficiency, I don't think the
10:31:01 6 Court should consider any kind of sufficiency argument.
10:31:05 7 You're not precluded from raising that at any time should he
10:31:08 8 be convicted of anything. You can raise that on appeal.

10:31:12 9 Second of all, as it relates to the jury instructions,
10:31:15 10 we had a jury instruction conference where we went through
10:31:20 11 the jury instructions page by page. At that time, when we
10:31:26 12 went over the "on or about" instruction, each side made
10:31:33 13 arguments, the Government to keep it in, the defense to take
10:31:36 14 it out.

10:31:37 15 Ultimately, the Court decided that it was going to
10:31:40 16 take that instruction out and removed it, which at the time,
10:31:45 17 the way I recall it, either right then or at the end of the
10:31:50 18 conference, the Judge asked if there were any objections,
10:31:53 19 and there were no objections stated at that time.

10:31:56 20 There were some other things that we talked about
10:32:00 21 throughout the jury conference where we removed things or
10:32:04 22 changed things, but at the end of the conference, my
10:32:08 23 recollection was that the judge asked us all if we were in
10:32:12 24 agreement with what was going back. And in fact, on the "on
10:32:16 25 or about" issue, the Government basically lost that issue

Motion Hearing

10:32:19 1 because we wanted to keep the "on or about" instruction in,
10:32:22 2 and the judge removed it. So we didn't object -- we didn't
10:32:27 3 lodge an objection or say, Judge, we want to revisit that.
10:32:32 4 We said, okay, Judge, great. But what I don't recall was
10:32:35 5 anything from the defense's side raising any objection to
10:32:39 6 "on or about" being included in the body of the count. So
10:32:44 7 there was no prior objection to that.

10:32:46 8 Then the jury sends the question to the judge, define
10:32:52 9 on or about. It's the Government's position that at that
10:32:56 10 time, a court can -- if the jury needs further instruction
10:33:03 11 on any particular term or something that wasn't defined, it
10:33:12 12 would be in the Court's discretion to then give the "on or
10:33:14 13 about" instruction then. The Government made a vehement
10:33:20 14 argument to put it in. The defense argued against it, and
10:33:24 15 the judge didn't put it in.

10:33:25 16 And again, I don't think that there were any real
10:33:27 17 objections lodged at that time to the question that the --
10:33:33 18 or the answer to the question that the judge sent back.

10:33:35 19 So just from points of preserving the record, the
10:33:40 20 Government states that.

10:33:41 21 Second of all, as it relates to one of the issues that
10:33:44 22 you raised, Ed, about other acts, the judge did give an
10:33:49 23 "other acts" instruction that, once again, at the jury
10:33:53 24 instruction conference no one objected to. Quite the
10:33:57 25 opposite. I think you guys really wanted that instruction.

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10:33:59 1 The Government didn't object.

10:34:01 2 I don't think I have anything else to say, Judge. We
10:34:06 3 would ask you to deny the defendant's motion for a mistrial.
10:34:09 4 And I'm not going to recall or recount or take issue with
10:34:16 5 some of the factual issues that Mr. Bryan raised. Of
10:34:21 6 course, the Government may have and does have different
10:34:23 7 positions on a lot of those, but I think that's the whole
10:34:26 8 purpose of the jury and their work that they're doing.
10:34:29 9 They're back there trying to figure those out and come up
10:34:32 10 with a verdict. Thank you.

10:34:34 11 THE COURT: All right.

10:34:35 12 MR. BRYAN: Just, Judge, one thing. I did
10:34:37 13 preserve the record as it related. I didn't want this
10:34:39 14 instruction to be read. I wanted the jury to be instructed
10:34:42 15 that when it comes to "on or about," they must consider the
10:34:45 16 time period of March 7. So I made that -- I think I --

10:34:50 17 MR. CORTS: Yeah, you did, when we were here,
10:34:52 18 yes, but not at the jury conference.

10:34:55 19 MR. BRYAN: And then when it comes to the
10:34:57 20 other acts thing, I think that's part of the problem with
10:35:00 21 widening the parameters because I think it creates this sort
10:35:02 22 of conflict between you cannot consider other acts and then
10:35:05 23 "on or about" says, well, unless they're near in time to the
10:35:09 24 event.

10:35:10 25 So this is an admittedly -- it's certainly a question

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10:35:13 1 of -- it's a first impression in my career. I'm sure it's
10:35:18 2 everybody else's. But I think it's vital to this case, so I
10:35:25 3 think I need to preserve that.

10:35:26 4 THE COURT: All these questions are difficult.
10:35:27 5 I'll remind everyone that when I instructed the jury out at
10:35:29 6 Court, I called everybody to side bar and asked if there
10:35:32 7 were any objections at that point and there were no
10:35:33 8 objections. So I want to make that clear, that I gave both
10:35:36 9 sides the opportunity to object to instructions of law after
10:35:38 10 I read them to the jury.

10:35:39 11 A couple comments. The defense is not entitled as a
10:35:46 12 matter of law to have "on or about" removed from the jury
10:35:49 13 instructions. I did eliminate that standard instruction,
10:35:54 14 erring on the side of caution at that time, to potentially
10:35:58 15 give the jury too much latitude. However, when they did
10:36:01 16 raise the issue with their question, I did have to respond.
10:36:06 17 And I don't think we can ever go wrong or the Court can ever
10:36:11 18 go wrong, in my humble opinion, if I direct them back to the
10:36:14 19 evidence. And the response is clear that the jury must
10:36:21 20 reasonably consider all the evidence in the case. And that
10:36:24 21 includes all the instructions of law. And I instructed them
10:36:26 22 on the evidence, what they may consider, direct,
10:36:29 23 circumstantial, and make only reasonable inferences.

10:36:34 24 The defense argument centers around the fear that the
10:36:38 25 jury may speculate, which is a fear in every case. However,

Verdict

10:36:41 1 the law presumes the jury will properly follow all of the
10:36:46 2 instructions and fairly consider all the evidence.

10:36:49 3 And by your own statements, you're convinced that the
10:36:52 4 evidence only points to March 7 and it's been so argued. So
10:36:56 5 I have no concern with my -- when my response directs the
10:37:00 6 jury to frame the time based on all the evidence. In
10:37:03 7 essence, I directed the jury back to the instructions and
10:37:06 8 evidence as a whole, which of course includes all reasonable
10:37:09 9 inferences. So I stand by my response.

10:37:11 10 The motion for mistrial's denied.

10:37:14 11 MR. CORTS: Thank you, Your Honor.

10:37:15 12 MR. BRYAN: Thank you, Judge.

10:37:20 13 (Recess taken.)

03:36:46 14 (Jury is present in open court at 3:36 p.m.)

03:36:46 15 VERDICT

03:36:49 16 THE COURT: Good afternoon, everyone.

03:36:52 17 Ms. Pierce, has the jury reached a verdict?

03:36:56 18 THE FOREPERSON: We have, Your Honor.

03:36:58 19 THE COURT: Please hand the papers to
03:37:01 20 Ms. Huth.

03:37:33 21 I do have completed verdict forms.

03:37:36 22 Mr. Davis, would you please rise and face the jury.

03:37:40 23 Count 1, Question 1: With respect to the charge in
03:37:46 24 Count 1 of the indictment for distribution of a mixture or
03:37:50 25 substance containing a detectable amount of Fentanyl, in

Verdict

03:37:55 1 violation of Title 21 United States Code, Section 841(a)(1)
03:37:59 2 and (b)(1)(C), we find the defendant, Russell Davis, guilty.

03:38:04 3 I have all 12 signatures, dated 5/4/18.

03:38:11 4 Then we move on to the enhancement question, which
03:38:16 5 reads: If you find the defendant, Russell Davis, guilty of
03:38:19 6 Question 1, then proceed to answer Question 1A.

03:38:22 7 Question 1A: Do you unanimously find that the
03:38:26 8 Government proved beyond a reasonable doubt that death
03:38:29 9 resulted from the use of Fentanyl distributed by the
03:38:32 10 defendant, Russell Davis?

03:38:34 11 Answer: Yes.

03:38:35 12 I have all 12 signatures.

03:38:39 13 Again, dated 5/4/18.

03:38:41 14 And I will poll the jury.

03:38:44 15 Mr. Harris, are those your votes, sir?

03:38:49 16 THE JUROR: Yes.

03:38:49 17 THE COURT: Ms. Sekerak, are those your votes,
03:38:52 18 ma'am?

03:38:52 19 THE JUROR: Yes, sir.

03:38:53 20 THE COURT: Mr. Gregory, are those your votes,
03:38:55 21 sir?

03:38:56 22 THE JUROR: Yes.

03:38:56 23 THE COURT: Mr. Tuggle, are those your votes,
03:38:58 24 sir?

03:38:59 25 THE JUROR: Yes, sir.

Verdict

03:38:59 1 THE COURT: Mr. Wild, are those your votes,
03:39:01 2 sir?
03:39:01 3 THE JUROR: Yes, Your Honor.
03:39:02 4 THE COURT: Ms. Pierce, are those your votes,
03:39:04 5 ma'am?
03:39:04 6 THE JUROR: Yes, Your Honor.
03:39:05 7 THE COURT: Ms. Caston, are those your votes,
03:39:09 8 ma'am?
03:39:09 9 THE JUROR: Yes, sir.
03:39:10 10 THE COURT: Mr. Angart, are those your votes,
03:39:12 11 sir?
03:39:12 12 THE JUROR: Yes.
03:39:13 13 THE COURT: Mr. Lopata, are those your votes,
03:39:16 14 sir?
03:39:16 15 THE JUROR: Yes, Your Honor.
03:39:16 16 THE COURT: Ms. Bettes --
03:39:19 17 THE JUROR: Bettes.
03:39:20 18 THE COURT: -- Bettes, are those your votes,
03:39:22 19 ma'am?
03:39:22 20 THE JUROR: Yes, sir.
03:39:22 21 THE COURT: Ms. Soha, are those your votes,
03:39:25 22 ma'am?
03:39:26 23 THE JUROR: Yes.
03:39:26 24 THE COURT: And Ms. Roland, are those your
03:39:28 25 votes, ma'am?

Verdict

03:39:29 1 THE JUROR: Yes.

03:39:30 2 THE COURT: I am satisfied that after polling
03:39:32 3 the jury, the answers line up with the decision on the
03:39:37 4 verdict form and the question on the death enhancement.
03:39:40 5 Therefore, I will accept the jury's verdict and their
03:39:44 6 decision on the enhancement and enter judgment accordingly.

03:39:47 7 Ladies and gentlemen, again, thank you so much for all
03:39:49 8 your time and effort. You're excused at this point. I will
03:39:52 9 be back to speak with you shortly.

03:40:12 10 (The jury was excused.)

03:40:13 11 THE COURT: Please be seated, ladies and
03:40:15 12 gentlemen.

03:40:15 13 All right. Mr. Davis, you've been convicted, and
03:40:24 14 we're going to set a sentencing date of August 29th. August
03:40:29 15 29th, 2018, 10 a.m.

03:40:33 16 Mr. Corts, appear to be okay with you?

03:40:35 17 MR. CORTS: Yes, Your Honor.

03:40:36 18 THE COURT: Okay. Mr. Bryan, Mr. Thompson?

03:40:39 19 MR. BRYAN: It will be, Your Honor.

03:40:41 20 MR. THOMPSON: Yes, Your Honor.

03:40:41 21 THE COURT: Okay. That will be the sentencing
03:40:43 22 date.

03:40:45 23 Anything else before we adjourn? Mr. Corts, on behalf
03:40:49 24 of the Government?

03:40:49 25 MR. CORTS: No, Your Honor. Thank you.

Verdict

03:40:50 1 THE COURT: Okay. Mr. Bryan?

03:40:51 2 MR. BRYAN: No. Thank you, Your Honor.

03:40:53 3 THE COURT: Thanks everyone. We are

03:40:55 4 adjourned.

03:40:55 5 Of course, the defendant is remanded.

03:41:14 6 (Proceedings adjourned at 3:41 p.m.)

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C E R T I F I C A T E

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9
10 I certify that the foregoing is a correct transcript
11 of the record of proceedings in the above-entitled matter
12 prepared from my stenotype notes.

13
14 /s/ Lance A. Boardman 06/07/2018
15 Lance A. Boardman, RDR, CRR DATE